

107TH CONGRESS
2D SESSION

S. 2655

To amend titles XVIII and XIX of the Social Security Act to improve access to long-term care services under the medicare and medicaid programs.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2002

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to improve access to long-term care services under the medicare and medicaid programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “A First Step to Long-
5 Term Care Act of 2002”.

6 **SEC. 2. MAKING MEDICAID ESTATE RECOVERY OPTIONAL.**

7 (a) IN GENERAL.—Section 1917(b)(1) of the Social
8 Security Act (42 U.S.C. 1396p(b)(1)) is amended by strik-
9 ing “shall seek” each place it appears and inserting “may
10 seek”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 subsection (a) shall take effect on the date of enactment
 3 of this Act. A State (as defined for purposes of title XIX
 4 of the Social Security Act) may apply such amendments
 5 to estates and sales occurring at such earlier date as the
 6 State may specify.

7 **SEC. 3. COVERAGE OF SUBSTITUTE ADULT DAY CARE SERV-**
 8 **ICES UNDER THE MEDICARE PROGRAM.**

9 (a) SUBSTITUTE ADULT DAY CARE SERVICES BEN-
 10 EFIT.—

11 (1) IN GENERAL.—Section 1861(m) of the So-
 12 cial Security Act (42 U.S.C. 1395x(m)) is
 13 amended—

14 (A) in the matter preceding paragraph (1),
 15 by inserting “or (8)” after “paragraph (7)”;

16 (B) in paragraph (6), by striking “and” at
 17 the end;

18 (C) in paragraph (7), by adding “and” at
 19 the end; and

20 (D) by inserting after paragraph (7), the
 21 following new paragraph:

22 “(8) substitute adult day care services (as de-
 23 fined in subsection (ww));”.

24 (2) SUBSTITUTE ADULT DAY CARE SERVICES
 25 DEFINED.—Section 1861 of the Social Security Act

1 (42 U.S.C. 1395x) is amended by adding at the end
2 the following new subsection:

3 “Substitute Adult Day Care Services; Adult Day Care
4 Facility

5 “(ww)(1)(A) The term ‘substitute adult day care
6 services’ means the items and services described in sub-
7 paragraph (B) that are furnished to an individual by an
8 adult day care facility as a part of a plan under subsection
9 (m) that substitutes such services for a portion of the
10 items and services described in subparagraph (B)(i) fur-
11 nished by a home health agency under the plan, as deter-
12 mined by the physician establishing the plan.

13 “(B) The items and services described in this sub-
14 paragraph are the following items and services:

15 “(i) Items and services described in paragraphs
16 (1) through (7) of subsection (m).

17 “(ii) Meals.

18 “(iii) A program of supervised activities de-
19 signed to promote physical and mental health and
20 furnished to the individual by the adult day care fa-
21 cility in a group setting for a period of not fewer
22 than 4 and not greater than 12 hours per day.

23 “(iv) A medication management program (as
24 defined in subparagraph (C)).

1 “(C) For purposes of subparagraph (B)(iv), the term
2 ‘medication management program’ means a program of
3 services, including medicine screening and patient and
4 health care provider education programs, that provides
5 services to minimize—

6 “(i) unnecessary or inappropriate use of pre-
7 scription drugs; and

8 “(ii) adverse events due to unintended prescrip-
9 tion drug-to-drug interactions.

10 “(2)(A) Except as provided in subparagraphs (B)
11 and (C), the term ‘adult day care facility’ means a public
12 agency or private organization, or a subdivision of such
13 an agency or organization, that—

14 “(i) is engaged in providing skilled nursing
15 services and other therapeutic services directly or
16 under arrangement with a home health agency;

17 “(ii) meets such standards established by the
18 Secretary to ensure quality of care and such other
19 requirements as the Secretary finds necessary in the
20 interest of the health and safety of individuals who
21 are furnished services in the facility;

22 “(iii) provides the items and services described
23 in paragraph (1)(B); and

24 “(iv) meets the requirements of paragraphs (2)
25 through (8) of subsection (o).

1 “(B) Notwithstanding subparagraph (A), the term
 2 ‘adult day care facility’ shall include a home health agency
 3 in which the items and services described in clauses (ii)
 4 through (iv) of paragraph (1)(B) are provided—

5 “(i) by an adult day-care program that is li-
 6 censed or certified by a State, or accredited, to fur-
 7 nish such items and services in the State; and

8 “(ii) under arrangements with that program
 9 made by such agency.

10 “(C) The Secretary may waive the requirement of a
 11 surety bond under paragraph (7) of subsection (o) in the
 12 case of an agency or organization that provides a com-
 13 parable surety bond under State law.

14 “(D) For purposes of payment for home health serv-
 15 ices consisting of substitute adult day care services fur-
 16 nished under this title, any reference to a home health
 17 agency is deemed to be a reference to an adult day care
 18 facility.”.

19 (b) PAYMENT FOR SUBSTITUTE ADULT DAY CARE
 20 SERVICES.—Section 1895 of the Social Security Act (42
 21 U.S.C. 1395fff) is amended by adding at the end the fol-
 22 lowing new subsection:

23 “(f) PAYMENT RATE FOR SUBSTITUTE ADULT DAY
 24 CARE SERVICES.—In the case of home health services con-

1 sisting of substitute adult day care services (as defined
2 in section 1861(w)), the following rules apply:

3 “(1) The Secretary shall estimate the amount
4 that would otherwise be payable under this section
5 for all home health services under that plan of care
6 other than substitute adult day care services for a
7 period specified by the Secretary.

8 “(2) The total amount payable for home health
9 services consisting of substitute adult day care serv-
10 ices under such plan may not exceed 95 percent of
11 the amount estimated to be payable under para-
12 graph (1) furnished under the plan by a home health
13 agency.”.

14 (c) ADJUSTMENT IN CASE OF OVERUTILIZATION OF
15 SUBSTITUTE ADULT DAY CARE SERVICES.—

16 (1) MONITORING EXPENDITURES.—Beginning
17 with fiscal year 2004, the Secretary of Health and
18 Human Services shall monitor the expenditures
19 made under the Medicare Program under title XVIII
20 of the Social Security Act (42 U.S.C. 1395 et seq.)
21 for home health services (as defined in section
22 1861(m) of such Act (42 U.S.C. 1395x(m))) for the
23 fiscal year, including substitute adult day care serv-
24 ices under paragraph (8) of such section (as added
25 by subsection (a)), and shall compare such expendi-

1 tures to expenditures that the Secretary estimates
2 would have been made for home health services for
3 that fiscal year if subsection (a) had not been en-
4 acted.

5 (2) REQUIRED REDUCTION IN PAYMENT
6 RATE.—If the Secretary determines, after making
7 the comparison under paragraph (1) and making
8 such adjustments for changes in demographics and
9 age of the Medicare beneficiary population as the
10 Secretary determines appropriate, that expenditures
11 for home health services under the Medicare Pro-
12 gram, including such substitute adult day care serv-
13 ices, exceed expenditures that would have been made
14 under such program for home health services for a
15 year if subsection (a) had not been enacted, then the
16 Secretary shall adjust the rate of payment to adult
17 day care facilities so that total expenditures for
18 home health services under such program in a fiscal
19 year does not exceed the Secretary's estimate of
20 such expenditures if subsection (a) had not been en-
21 acted.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to items and services furnished on
24 or after January 1, 2003.

1 **SEC. 4. CLARIFICATION OF THE DEFINITION OF HOME-**
 2 **BOUND FOR PURPOSES OF DETERMINING**
 3 **ELIGIBILITY FOR HOME HEALTH SERVICES**
 4 **UNDER THE MEDICARE PROGRAM.**

5 (a) CLARIFICATION.—Sections 1814(a) and 1835(a)
 6 of the Social Security Act (42 U.S.C. 1395f(a); 1395n(a))
 7 are each amended by adding at the end the following:
 8 “Notwithstanding the preceding sentences, in the case of
 9 an individual that requires technological assistance or the
 10 assistance of another individual to leave the home, the
 11 Secretary may not disqualify such individual from being
 12 considered to be ‘confined to his home’ based on the fre-
 13 quency or duration of the absences from the home.”.

14 (b) TECHNICAL AMENDMENTS.—(1) Sections
 15 1814(a) and 1835(a) of the Social Security Act (42 U.S.C.
 16 1395f(a); 1395n(a)) are each amended in the sixth sen-
 17 tence by striking “leave home,” and inserting “leave home
 18 and”.

19 (2) Section 1814(a) of the Social Security Act (42
 20 U.S.C. 1395f(a)), as amended by subsection (a), is amend-
 21 ed by moving the seventh sentence, as added by section
 22 322(a)(1) of the Medicare, Medicaid, and SCHIP Benefits
 23 Improvement and Protection Act of 2000 (appendix F,
 24 114 Stat. 2763A–501), as enacted into law by section
 25 1(a)(6) of Public Law 106–554, to the end of that section.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to items and services furnished on
3 or after the date of enactment of this Act.

